IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
(Not) Restricted
Suitable for Publication

Case No. CR-23-01075

DIRECTOR OF PUBLIC PROSECUTIONS

v

YASMIN GHEDIA

JUDGE:	HER HONOUR JUDGE KARAPANAGIOTIDIS
WHERE HELD:	Melbourne
DATE OF HEARING:	1 February 2024
DATE OF SENTENCE:	22 February 2024
CASE MAY BE CITED AS:	DPP v Ghedia
MEDIUM NEUTRAL CITATION:	[2024] VCC 202

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – Sentencing.
Catchwords:	Plea of guilty – obtain financial advantage by deception – delay – mental health – gambling – family hardship – restitution – good prospects of rehabilitation – combination sentence
Legislation Cited:	s5 *Sentencing Act* 1991
Cases Cited:	*Boulton v The Queen* [2014] VSCA 342, *Worboyes v The Queen* [2021] VSCA 169, *Markovic v The Queen* [2010] VSCA 105
Sentence:	Imprisonment for a total period of three months' in combination with a community corrections order of two years and three months' duration.

APPEARANCES:	Counsel	Solicitors
For the DPP	Ms. C Paganis	Montana Moss
For the Accused	Mr. C Mandy	Annamiek Van Loon

HER HONOUR:

1 Yasmin GHEDIA, you are charged on Indictment P10626793 with 3 counts of Obtaining a Financial Advantage by Deception, contrary to section 82(1) of the *Crimes Act 1958.*

2 Each charge is a rolled-up count, comprising of multiple transactions over various time frames.

3 **Summary of offending**

4 There are three Victim Insurance Companies in this matter and the total financial advantage deceived amounts to $462,372.22.

5 In 2019, the three Victim Insurance Companies reported to Victoria Police that they were the victims of fraudulent insurance claims.

6 Between September 2015 and November 2019, you purchased a total of 52 household contents and contents only insurance policies. The names, addresses and phone numbers of the insurance policy holders were all fake.

7 Throughout the lifespan of these 52 insurance policies, investigators detected 72 different claims against these polices.

8 You would pay the premiums on the insurance policies by using VISA credit cards linked to various banks in unidentified names, or directly through bank accounts. These accounts, as identified in the prosecution summary, were controlled by you for your own personal use.

9 After taking out the insurance policies, you, on average, would lodge a claim around 160 days after the inception of the policy, stating that you had either lost items or had items stolen. Most of the reports made by you related to personal items, such as jewellery or laptops.

10 You would lodge a claim over the phone and once lodged, the phone number you used would then be disconnected. This would then force the Claims Officers to communicate with you via email only, thereby limiting any direct verbal communication.

11 You would normally provide the minimum information required to process the claim, being a copy of the Invoice for the stolen or lost items, or a Police Report, or in some instances, just the Police Report number.

12 The proof of loss typically used by you was a fraudulent refurbished Invoice, whereby the contents were changed to avoid detection. Many of the Invoices were of a similar format, despite being from different companies.

13 On some occasions, you also used false Police Report numbers and false lost property Reports were provided to the Victims. The information in the Reports included details of Police Officers who did not exist.

14 The first Victim is Insurance Australia Group ("IAG"). The total amount of the financial advantage deceived against this Victim is $217,846.04, commencing on 31 March 2016 and ending on 25 November 2019, a period of approximately three and a half years.

15 You made a total of 31 claims against IAG in that time frame, being primarily for jewellery and "Apple" products. Each claim related to an alleged accidental loss of portable valuables, or alternatively, a loss as a result of a home burglary, whereby high value electronic equipment and/or jewellery had been stolen.

16 Where proof of loss documents were supplied by you to IAG, it was noted that numerous purchase records were issued by the same jewellery suppliers in India. In some instances, identical invoices were submitted by two different claimants, however, the transaction shared common order numbers, telephone numbers, salesperson, item, and price.

17 Furthermore, audio recordings of claim lodgement telephone calls with IAG demonstrated remarkable similarities.

18 In the claims that were processed, you would frequently seek to obtain a cash settlement, rather than replacement of the lost items. Those cash settlements were then paid into the bank accounts you had set up.

19 The second Victim is QBE insurance ("QBE") and that is for a period between March 2017 and July 2019, so just over two years for the amount outlined.

20 You made a total of 15 claims in that time frame again in respect of similar items. Again, you would frequently seek to obtain a cash settlement, which was then paid into your bank account.

21 The third Victim is Suncorp Insurance ("Suncorp") and that was for a period of three years for the amount outlined.

22 You made a total of 26 claims again for similar items.

23 The addresses given by you were later identified by Investigators as being listed for lease on "realestate.com.au" at the time of the claimed events.

24 That is a summary of the prosecution opening. I have relied upon its full contents in this, in my task of sentencing you.

25 In September 2019, Police commenced an investigation into this fraudulent activity, titled 'LYRA-2019,' after a report was made to Victoria Police by the three Victim Insurance Companies.

26 On 14 July 2021 a search warrant was executed at your home and various items were located, including your laptop which was later analysed, locating fraudulent documents, identity cards and a spreadsheet containing information relating to the fraudulent insurance policies.

27 On 23 March 2023, you were arrested and interviewed for the offending.

28 **Gravity of the offending**

29 The charges you have pleaded guilty to are serious, as indicated by their maximum penalties. Your offending was calculated, planned and persistent and caused a loss to the victim companies. Your offending spanned over the period between September 2015 to November 2019. The amount of each transaction is outlined in Schedule A to the indictment and the totality of your offending is significant.

30 While the amount involved is not determinative it is an important consideration in an assessment of the gravity of your offending. Each charge is a rolled up one and the Court must consider all of the circumstances of your offending. Once detected I accept that your offending was relatively easy to identify. It

was however still relatively sophisticated, including for example the making and use of false documents from overseas, as well as multiple contact points and 'single use' telephone connections.

31 While your Counsel, Mr Mandy, placed your offending in context, which I'll refer to shortly, it was not suggested on your behalf that there were any special circumstances which moderate your culpability or capacity to have appreciated the wrongfulness of your actions.

32 **Procedural history and plea of guilty**

33 As already noted, your offending was reported to the police in 2019. It was assigned an operation name though it appears little occurred over the next year, until it progressed through different informants in December of 2020. It wasn't until July 2021 that the warrant was executed at your home, and you were interviewed. In December 2021 the operation was recorded as 'inactive' and was 'resurrected' in January 2023 when the current informant commenced a review of the data on your services. It then only took him three months, that is until April 2023, to compile and complete the brief of evidence.

34 You entered a plea of guilty at the committal hearing and no witnesses have been cross examined. This entitles you to an important sentencing discount. Your plea of guilty represents an acceptance of responsibility on your part and is indicative of remorse. On the evidence before me I accept that you are remorseful for your conduct.[1] Your plea of guilty also has significant utilitarian benefit, and as accepted by the prosecution, the observations of the Court of Appeal in *Worboyes v The Queen* have some application.[2]

35 **Personal circumstances**

36 Your personal history was canvassed by Mr Mandy and is referred to in the report of Dr Mathew Barth. In summary, you were born in India and for the first few years you lived in your parents' home which was significantly overcrowded and in an area suffering the effects of drought. Your family then moved to Vadadora, where life was much more stable and you managed to

[1] Psychological Report by Dr Mathew Barth, dated 21 January 2024 [30]; Testimonials
[2] *Worboyes v The Queen* [2021] VSCA 169

excel at school, ultimately completing a Bachelor of Mechanical Engineering in 2006. Your parents continue to live in India and in more recent years your sister migrated to Australia and resides in Melbourne.

37 In 2007, aged 22, you migrated to Australia with the expectation that it would be full of opportunity and that life would be more prosperous for both you and your family. Your father took out a bank loan to help you move. In 2008 you started a Masters at Ballarat University but you were struggling to support yourself. You and others were living in shared accommodation and working part-time jobs. In 2010 you completed your Masters and hoped to find work and success. This didn't happen and menial labour was all you could find. In 2012 you met your wife Sheetal in India and you married. You returned to Australia that same year but your wife didn't join you until 2014 because of the visa process. I note that you are both now Australian citizens. Despite applying for countless jobs in the area in which you were qualified you were unsuccessful and continued to work in door-to-door sales.

38 You struggled financially and were burdened by the pressure and expectation of providing for your wife and your parents in India, who had since retired and were dependent on you. In 2015 your offending started, along with your gambling. Your Counsel submits - 'the personal context for both is clear enough – a young man, academically successful with a new wife and a family relying on him, feeling as though he had failed them all, and finding a desperate and fundamentally dishonest, way to make up for it – because you thought that material benefit was important.'[3] Instead of relieving your stress and financial difficulties your gambling compounded them. You told Dr Barth that your gambling escalated to three times a week and you accrued from between $30,000 to $40,000 in credit card debts.

39 In 2018 your son was born. Not long after his birth you stopped gambling and became a registered real estate agent. You apparently started reading books about personal development and life improvement. You stopped your offending and your gambling. You told Dr Barth that you reduced your gambling considerably during 2019 and have rarely gambled since. You also started a successful career as a real estate agent. In August 2022 you

[3] Submissions of Defence, dated 30 January 2024 [22]

established your own real estate agency, ‘Red Rock’ with a business partner. You resigned from the business when you were charged in March 2023. Currently you are unemployed and actively assist your wife in her business which specialises in displaying homes for sale. Understandably you are anxious as to the likely impact that these legal proceedings may have on your future employment prospects.

40 The report of Dr Barth indicates that your current mental state is typified by a ‘sad and despondent mood and a sense of hopelessness about [your] future’ which are the direct impact of the stress of your legal matter. Your internal dialogue is punitive and reinforces your emotional distress and undermines your self-esteem. Of concern you also described some ongoing suicidal ideation. Dr Barth diagnoses you with an ‘Adjustment Disorder’ – with mixed Anxiety and Depressed Mood’ and considers that you remain at risk of further deterioration in your moods, and you may be vulnerable to a more severe mood disturbance, without ongoing psychological treatment.[4] He considers that ‘this vulnerability would be likely to be particularly intense in a custodial context. Accordingly, in such circumstances the provision of appropriate treatment and support would be imperative in [your] case to assist with [your] transition to the custodial environment.’

41 In assessing your personal circumstances I accept and take into account the matters raised in Dr Barth’s report and on your behalf by your Counsel.

42 Mr Mandy also relied upon a number of other mitigatory factors.

Delay

43 I’ve already canvassed the procedural history of your case and the delay in its finalisation. On this chronology, as at least July 2021, you have been aware of the investigation and awaiting its result. You have spent some two and a half years in a state of ‘uncertain suspense’ awaiting your punishment and knowing that it might involve a custodial component.

44 As the higher courts have previously stated, the justification for taking delay into account as a mitigatory factors, rests upon the twin considerations of

[4] Psychological Report by Dr Mathew Barth [33]

rehabilitation and fairness[5]. First and foremost, where there has been a relatively lengthy process of rehabilitation since the offending, being a process in which the community has a vested interest, the sentence should not jeopardise the continued development of this process, but should be tailored to ensure as much as possible that the offender has the opportunity to complete the process of rehabilitation. Secondly, from the point of view of fairness to the offender, the sentence should reflect the fact that the matter has been hanging over his or her head for some time, thereby keeping the offender in a state of suspense as to what will happen.

45 In your case, Mr Ghedia, I accept that both limbs are engaged, and I accept that delay is a matter of real significance. As Dr Barth explains, your emotional reaction to your legal predicament has been intense and I take into account the suspense and its effect on you during this period. Also, it is over four years since the offending ceased, during which you have been living a normal and law-abiding life and attempted to improve your prospects and support your family.

46 **Exceptional hardship**

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48 Your Counsel submits that an immediate custodial sentence would have a devastating impact on your family. Your family have little other support in Australia.

49

50 Currently, your wife's income from her business supports the living expenses of the family and the monthly mortgage, along with the lease on your wife's business warehouse. In June 2021 your wife was involved in a car accident and was charged. Ultimately, she pleaded guilty in relation to the incident and in February 2023 her licence was cancelled for two years. Also, your young son goes to a primary school that takes some 10 to 15 minutes to drive and approximately 30 minutes by public transport to access.

51 It is submitted that your family's livelihood would be jeopardised because your wife cannot work unless you are able to drive her and take your son to school. The prosecution submits that its ultimately a matter for the Court, that the

[5] *DPP v Merryfull; DPP v Bloomfield* [2023] VSCA 244.

factors do not rise to the level of being ‘exceptional’ and that its open on the evidence of your wife that other arrangements are available that could assist her business.

52 Your wife gave evidence in Court and I accept her to be a truthful witness who is experiencing anguish at the prospect of your imprisonment. In brief summary, she confirmed the circumstances relied upon by your Counsel and indicated that she had been running her business for three years. She has one casual employee. She hires a warehouse where she stores furniture and to ‘stage’ a property she needs to drive to the homes and take items with her. Since the loss of her licence, she relies on you to do this. There is no one else to help her. Your sister lives nearby but does not have a driver's licence and she does not talk much to her brother in law. She gave evidence that if you went to gaol, she could not survive without you. She only knows a little bit of English and along with driving her around, you also assist her with the day to day running of the business. Also, if she had to take public transport to accompany your child to school, she wouldn’t have enough time to do her job. In cross-examination, she gave evidence that a truckdriver moves the big pieces of furniture and while she agreed that she could use an Uber or taxi to attend the various homes she stated it would be unprofitable because of the cost.

53 As the Court explained in *Markovic*[6], in exceptional circumstances, family hardship may be taken into account in the exercise of the sentencing discretion, as an exercise of mercy properly extended by the Court in such a case. While I accept that a term of imprisonment will likely adversely impact your family – and I take into account the additional ‘cultural isolation’ that your counsel referred to - I don’t consider that it rises above the type of hardship or adverse effect on dependants that almost inevitably follows from the imposition of a term of imprisonment; in other words, in all the circumstances, I do not consider it to be exceptional.

54 As the Court also made clear in *Markovic*, the effect on an offender of hardship caused to family members by his imprisonment is quite a separate

[6] *Markovic v The Queen* [2010] VSCA 105

matter.[7] An offender's anguish at being unable to care for his family can properly be taken into account as a mitigating factor. In your case, Mr Ghedia, I am satisfied that the experience of imprisonment will be more burdensome for you and I also accept that it materially affects the assessment of the need for specific deterrence and your prospects of rehabilitation.

Restitution

55 You have been willing to make restitution. A total of just under $200,000 was frozen in bank accounts that you were operating. The balance of some $260,000 has largely been borrowed.

56 I proceed cautiously in my consideration of the issue of restitution and the weight to be given to it. In all the circumstances, I accept in your case that it is an important mitigating factor and is a further indication of your contrition and remorse.

57 **Prospects of rehabilitation**

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59 The prosecution accept that your prospects of rehabilitation are positive. I accept, in all the circumstances, that your prospects of rehabilitation are extremely good. You have no prior criminal history or subsequent offending. As identified by Dr Barth in his report, there are many positive prognostic factors in your case, including the continued support of your wife, your capacity to learn from your mistakes and the profound impact on you of the criminal justice system process which has acted 'as a strong motivator for[you] to pursue constructive personal change.'

60 I received character references on your behalf which collectively speak of this offending as out of character and of your considerable remorse. Your friend Ravinder Sandhu refers to you as 'trustworthy, hardworking, ambitious, friendly, very humble and kind to everyone.'[8]

[7] Ibid
[8] Testimonial of Ravinder Sandhu, dated 30 January 2024 [4]

61 You have apparently consulted with psychologist Mr Frank Donnoli and this treatment has mainly focused on supportive counselling. You report that it has been beneficial.

62 Dr Barth considers that your risk of further criminality falls towards the lower rather than the higher range. He opines that while you are a man of 'solid intelligence' your emotional awareness and coping skills are limited. He describes you as a fragile and insecure man and how your financial hardship was a particular source of stress which eroded your self-esteem. While you do not meet the criteria for a personality disorder, Dr Barth considers that treatment is warranted that assists you to improve your insight into your offending behaviour, enhance your simplistic coping skills and develop a more genuine sense of self-esteem.[9] Also, despite your reported reduction with gambling, Dr Barth recommends that you participate in gambling-related counselling to reduce your risk of relapsing.

63 **Sentencing principles**

64

65 The purposes for which sentences may be imposed are just punishment, general deterrence, specific deterrence, rehabilitation, denunciation and protection of the community. In light of my assessment of your circumstances and your prospects of rehabilitation, I consider specific deterrence and community protection are of reduced significance to the sentencing discretion. Given, however, the lengthy offending period they certainly remain relevant. General deterrence and denunciation are of particular importance in this case.

66 I take into account the sentencing guidelines referred to in section 5 of *the Sentencing Act* 1991, where relevant in your case. I also take into account the principles of parsimony, proportionality and totality. While each charge represents separate offending, I need to ensure that the overall sentence is a just and appropriate one for your overall offending.

67 Further, I have taken into account the general sentencing landscape for such offending and the relevant cases, noting however that of course each case is unique.

[9] Psychological Report by Dr Mathew Barth [38]

68 The prosecution submit that a term of imprisonment structured by way of a head sentence with a non-parole period is required. Your Counsel submits that a Community Corrections Order ('CCO') is capable of reflecting and balancing all relevant sentencing purposes. I had you assessed for a CCO, and you were assessed as suitable. The MHARS report that was obtained also recommends psychological counselling.

69 Guided by the Court of Appeal in *Boulton,*[10] I accept that a CCO is capable of being a highly punitive sentence and can be imposed in cases of relatively serious offending. After careful consideration however, I consider that an immediate term of imprisonment is necessary, and I consider that a combination sentence is the just and appropriate one in your case.

70 As the Court in *Boulton* stated, 'the availability of the combination sentence option adds to the flexibility of the CCO **regime**. It means that, even in cases of objectively grave criminal conduct, the court may conclude that all of the purposes of the sentence can be served by a short term of imprisonment coupled with a CCO of lengthy duration, with conditions tailored to the offenders circumstances and the causes of the offending.[11] In your case, Mr Ghedia, I have concluded that the punitive, deterrent, denunciatory and rehabilitative purposes of sentencing can be sufficiently achieved by a short term of imprisonment, coupled with a CCO of lengthy duration. I accept, for the reasons canvassed already, that this will be a significant sanction for you. I do take into account the powerful mitigatory factors advanced on your behalf, including your plea of guilty, the delay, restitution and the anguish you will likely experience in custody. The factors have in particular caused me to moderate the custodial component of your sentence.

71 Can I ask you to stand please.

72

73 **Sentence**

[10] *Boulton v The Queen* [2014] VSCA 342.
[11] Ibid, [141]

74 Mr Ghedia, synthesising all relevant matters, you are convicted and sentenced as follows.

75 Charge 1 – Three months' imprisonment and a community corrections order of two years and three months.

76 Charge 2 – three months' imprisonment and community corrections order of two years and three months.

77 Charge 3 – three months' imprisonment and community corrections order of two years and 3 months.

78 I make no orders for cumulation. What that means for you, Mr Ghedia, is I have sentenced you to a term of three months' imprisonment which will commence today. You will be released on a community corrections order of two years and three months' duration. Okay? You can take a seat and I will go through some other matters. Thank you.

79 Pursuant to s40 of the Sentencing *Act,* the community corrections order that I have imposed is the one order. There is no pre-sentence detention, is that right counsel?

80 MR MANDY: Yes that's right, Your Honour.

81 HER HONOUR: And pursuant to s6AAA, I can indicate that but for the plea of guilty I would have sentenced Mr Ghedia to some two years and six months' imprisonment with a non-parole period of one year and five months. Mr Ghedia, the purpose of that indication, it's a difficult one I must say in your case. But the purpose of it is to indicate to you that by accepting responsibility and pleading guilty as you have, you have effectively saved yourself a considerable prison sentence.

82 Counsel, I propose to have noted as custody management issues that Mr Ghedia is reported to be a suicide risk, he suffers from an adjustment disorder, it's his first time in custody. Is there anything further?

83 MR MANDY: No, Your Honour.

84 HER HONOUR: All right. I just wonder in terms of the officer in court, when I rise I note that Mr Ghedia's wife is in court. Can Mr Ghedia remain for a moment to speak to his counsel and his wife. All right so we will come to that in a moment.

85 The community corrections order will be printed in a moment, I will just check with my associate, do we have that ready?

86 ASSOCIATE: Yes, Your Honour.

87 HER HONOUR: The conditions that I am going to impose are as follows: supervision, treatment for mental health and treatment and rehabilitation for programs. I am also imposing a community work component and the community work that I order is for 150 hours and I will off-set 100 hours against treatment.

88 HER HONOUR: Thank you. Ms Paganis, is there anything else required of me after this order is signed?

89 MS PAGANIS: No, Your Honour, there was just the issue of the forfeiture order as well.

90 HER HONOUR: Mr Mandy, was that opposed? I am just trying to bring it up. I will find it.

91 MR MANDY: It is not opposed, Your Honour.

92 HER HONOUR: All right I have it here. So items 1 to 20.

93 MS PAGANIS: (Indistinct words.)

94 HER HONOUR: - - - all the items.

95 MS PAGANIS: Yes.

96 HER HONOUR: All right I'll make the forfeiture order which is unopposed in the terms sought. Right thank you. Mr Mandy, either yourself or your instructor can approach Mr Ghedia.

97 MR MANDY: Thanks, Your Honour.

98 HER HONOUR: Can we have copies to counsel, Ms Paganis, you'll have one obviously emailed through. Copies to counsel and to Mr Ghedia before we leave court and as noted, Mr Mandy, you'll have a few moments with your client up here once I adjourn, all right?

99 MR MANDY: Thank you, Your Honour, appreciate that.

100 HER HONOUR: Thank you, counsel for your assistance, we'll adjourn the court.

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